

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 137 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

JAMAN HAJI MAMAD JAT

Appearance:

1. Criminal Revision Application No. 137 of 2002
MR KT DAVE, APP for Petitioner No. 1
NOTICE SERVED BY DS for Respondent No. 1-5,25-27
MR KB ANANDJIWALA for Respondent No. 6-24
DELETED for Respondent No. 28-34
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/04/2002

ORAL JUDGEMENT

1. Accused Nos. 1 to 5, though served, have opted not to remain present.

2. This Revision Application has been preferred by the State of Gujarat against the decision of the ld. Addl. Sessions Judge, Kachchh at Bhuj disposing of application exh.73 preferred by the ld. PP in Sessions Case No. 85/1999. Ld. APP Mr. K.T. Dave, during the course of his submission, has pointed out that respondent nos. 28 to 34 - original accused, are deleted as party respondents from the present petition vide order dated 26.3.2002.

3. Application Exh.73 is an application which can be said to be self-explanatory. This application deals with five different Sessions Cases namely Sessions Case Nos. 85/1999, 51/2000, 73/2000, 77/2000 and 1/2002. All these cases have been registered on account of five different chargesheets filed by the Investigating Agency for one offence registered with Dayapar Police Station being CR No. I. 12/99. Ld. Addl. Sessions Judge has partly allowed application exh.73 and has permitted the prosecution to club three different sessions cases and to lead evidence in one Sessions Case namely Sessions Case No. 85/1999. However, request to try two different Sessions Case No. 77/2000 and 1/2002 which prosecution intends to try simultaneously with other three Sessions Cases, has not been accepted. Ld. Addl. Sessions Judge has not assigned any cogent reasons and has tried to justify this rejection on the ground that some chargesheets are filed without obtaining prior sanction required under the law. Though, ld. Judge has not specifically mentioned, but it is indirectly reflected from tenor of the order that he is afraid of misjoinder of charges on account of cases with sanction and cases without sanction and in three cases, the day on which application exh.73 was preferred, charges were already framed. Some of the accused shown as accused in Sessions Case No. 77/2000 and 1/2002 are also accused in other three cases where charges are already framed. But ultimately, all the accused are to be tried for CR No. I. 12/99 registered with Dayapar Police Station. Mr. K.T. Dave, ld. APP submits that if trial of all five cases are conducted simultaneously and evidence is recorded in one Sessions Case, then accused are not likely to be prejudiced and they will be at liberty to cross examination at length to each witness as evidence is yet to be led.

4. In response to the query raised by the Court, ld. counsel Mr. Anandjiwala appearing for Respondent Nos. 6 to 27 accused submits that such a course can be and may

be adopted. However, accused reserves their right to raise all legal contentions during the course of trial and at the time of final arguemnts.

5. Ld. trial Judge, in this particular contingency shall permit each ld. counsel to cross-examine irrespective of the fact whether particular accused is accused in Sessions Case No. 85/99 or not. So, ld. trial Judge is permitted and directed to conduct all five Sessions Cases simultaneously and record evidence in Sessions Case No. 85/99 and shall deal and dispose of the same by one common judgment. However, it will be open for the ld. trial Judge to deliver the separate judgments or one judgment so far as Sessions Case No. 77/2000 and 1/2002 are concerned. The impugned order dated 13.3.2002 passed by ld. Sessions Judge, Bhuj-Kachchh in Sessions Case No. 85/99 stands modified accordingly.

6. Criminal Revision Application stands disposed of accordingly. Rule is made absolute accordingly.

Direct Service is permitted.

30.4.2002 [C.K. BUCH, J]
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